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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
SHARON J. MATSUMOTO • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

December 30, 2014

Captain Rod Kusch
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File #14-0281
L.A.S.D. File #014-05600-0276-013

Dear Captain Kusch:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 29, 2014, fatal shooting of Daniel Ibarra by Los Angeles County Sheriff's Department (LASD) Deputy James Ponsford. It is our conclusion that Deputy Ponsford acted in lawful self-defense and defense of others at the time he fired his weapon.

The District Attorney's Command Center was notified of this shooting on April 29, 2014, at approximately 5:00 a.m. The District Attorney Response Team, comprised of Deputy District Attorney Amy Pellman Pentz and District Attorney Senior Investigator [redacted] responded and was given a briefing and walk-through of the scene by LASD Lieutenant John Corina.

The following analysis is based on reports, audio recordings, and photographs submitted to this office by the LASD – Homicide Bureau. No departmentally compelled statements were considered in this analysis.

FACTUAL ANALYSIS

On April 29, 2014, at approximately 2:45 a.m., Daniel Ibarra called 9-1-1 to report that he had shot his [redacted] in the face. Immediately thereafter, LASD broadcast a priority call of a "245" gunshot victim at [redacted] in the City of [redacted] Several uniformed patrol deputies assigned to the East Los Angeles Sub Station responded to the call. As the deputies drove to the location, further information was relayed indicating that the suspect had shot his [redacted] and that he had a gun.

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[1] [redacted] is a single family residence located on the [redacted] side of [redacted] of [redacted] and [redacted] of [redacted] To the rear of the residence is a converted studio apartment attached by one wall to the main residence.

Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street
Los Angeles, CA 90012-3210
(213) 974-3888
Fax: (213) 620-1208
WEBSITE: http://da.co.la.ca.us

Deputies Roger Parga and Justin Waites, together in a marked black and white vehicle, and Deputies Jose Esparza and Remin Pineda, together in a separate marked black and white vehicle, responded from north of the location. They parked their vehicles near the intersection of Gage Avenue and Michigan Street, north of the location. Two additional patrol units, as well as a sergeant's unit, arrived at the same time and parked near the corner of First Street and Gage Avenue, just south of the location.

Before Parga and Waites could exit their patrol vehicle, they heard a gunshot coming from south of their location and felt a round ricochet off their patrol vehicle. Waites backed up the patrol vehicle a short distance and Parga looked south and saw a man, later identified as Daniel Ibarra, moving in and around parked cars on the west side of Gage Avenue. Parga and Waites exited, took cover behind their patrol vehicle, and advised that their vehicle had been struck by gunfire.

Another responding deputy located Ibarra, who was mid-block between First Street and Michigan Avenue. Ibarra was holding a cell phone in one hand and a gun in the other hand. This information was immediately broadcast to all units.

Two women, later identified as [redacted] and [redacted] exited [redacted] and ran toward the deputies who were staged south of their residence. [redacted] was bleeding from her face. The deputies ordered the women to show their hands. The women complied with the deputies orders and took cover with Deputies Manuel Navarro and Alejandra Becerra behind their patrol vehicle.

[redacted] told the deputies that her [redacted] had shot her in the face during an argument. Ibarra apologized to [redacted] and called 9-1-1.[2] [redacted] told the deputies that her [redacted] ages [redacted] were still inside the rear studio apartment of the residence. Navarro and other deputies rescued the [redacted] while Ibarra was still outside of the residence. [redacted] was transported to the hospital.

[redacted] spoke to Deputy Cuauhtemoc Gonzalez. Torres briefly explained what had occurred. She also told Gonzalez that she previously heard Ibarra say that he would "shoot it out with the cops, or they would have to kill him" if he ever got in serious trouble.

During this time period, Los Angeles Police Department (LAPD) Air Ship #[redacted] arrived and provided vital information to the deputies.[3] LAPD Officer [redacted] saw Ibarra on Gage Avenue holding a handgun in his right hand and a cell phone in his left hand. Ibarra was ducking in and around parked vehicles, retaining walls, and trees. [redacted] relayed this information to the deputies at the scene. While Air Ship #[redacted] was overhead, several announcements for Ibarra to put down the gun, put his hands up, and walk to the middle of the street were broadcast from the public address system. Ibarra ignored all commands and continued pacing on the sidewalk. At

[2] [redacted] Ibarra initially told the deputies at the scene that she and her husband were accosted by an unknown gang member.

[3] At the time the deputies requested air support, LASD's air unit was unavailable to respond.

3:06 a.m., LASD Air Ship – Air 24 arrived, relieved LAPD Air Ship [redacted] and provided continuous updates regarding Ibarra throughout the incident.

At approximately 3:10 a.m., Ibarra called 9-1-1 and spoke to a law enforcement technician at the East Los Angeles Sheriff's Station. Ibarra did not identify himself by name, but told the technician that he was "the emergency" and provided the [redacted] address. Ibarra told the technician that he wanted to make sure his wife was "ok." Sergeant Andrew Cruz joined the conversation and spoke to Ibarra. Cruz asked Ibarra to provide his last name. Ibarra declined to give his name, but indicated that his name would be in the next day's obituaries. Cruz asked Ibarra several times to put down his firearm and surrender. Ibarra responded, "I'm not gonna put down the fucking gun! You can just shoot me! I don't give a shit! Shoot me!" The call was abruptly terminated. Several attempts were made to reconnect with Ibarra, but they were unsuccessful.

At 3:40 a.m., members of LASD's Special Enforcement Bureau (SEB) arrived and took control of the scene. Deputy James Ponsford was one of the responding SEB deputies. Ponsford immediately retrieved his weapons from his vehicle and walked to one of the two Armored Response Vehicles (ARVs) that were on scene. Ponsford entered the ARV located near Gage Avenue and First Street and accessed the turret on top of the vehicle. From that location, Ponsford was able to look northbound on Gage Avenue and see Ibarra.

Ponsford saw Ibarra on the west sidewalk of Gage Avenue. Using the magnifying scope on his rifle, Ponsford observed Ibarra holding a revolver in one hand and a cell phone in the other hand as he paced back and forth along the sidewalk. Ponsford described Ibarra as "agitated."

Using the public address system, SEB deputies repeatedly commanded Ibarra to put down his gun, put his hands up, and surrender. Ibarra did not comply with these orders.

SEB deputies formulated a plan to better contain Ibarra. The plan called for one ARV to remain near the location, while a second ARV circled the block and approached from north of the location, driving south on Gage Avenue. Ponsford, along with Deputies Kevin Hilgendorf, Steve Longan, Curt Messerschmidt, and Jeff Pohl, and Sergeant Grant Roth, drove the ARV around the block and proceeded south on Gage Avenue, toward [redacted] Ponsford was positioned in the turret of the ARV, which allowed him a full visual of the street as the ARV proceeded south.

As the ARV drove around the block and moved into position, Ibarra walked south to his residence, and westbound in the driveway toward the rear apartment attached to the location, and walked under an awning. At this time, Air 24 was unable to see Ibarra. When Ibarra walked out from under the awning, he was holding a box of ammunition as well as the gun. Air 24 advised the deputies that Ibarra appeared to be reloading his weapon. Deputies continued to use the public address system to order Ibarra to surrender. Ibarra did not surrender, yelled "Fuck you!" and extended his middle finger at the deputies.

The ARV came to a stop just north of the residence and Ponsford, still looking out the turret, spotted Ibarra in the driveway of the residence. Ponsford saw Ibarra either holding his weapon behind his waistband or in his rear pocket. Several commands were given ordering Ibarra to drop the gun, raise his hands, and surrender. Ibarra did not comply and moved his hand toward the weapon numerous times.

Ponsford was aware that Ibarra had shot his [redacted] fired at deputies prior to Ponsford's arrival at the scene, failed to surrender in violation of multiple orders, and indicated that he would "shoot it out" with the police if confronted. Ponsford had also been provided information that Ibarra was wanted for murder out of state.[4] Based upon this information in conjunction with the warning from Air 24 that Ibarra was reloading his weapon, Ponsford believed that Ibarra was an imminent threat to law enforcement and civilians at the scene. Ponsford fired his rifle at Ibarra. Ibarra collapsed on the ground and crawled westbound. Ponsford believed that Ibarra was holding the gun as he moved. Still considering him to be a threat, Ponsford again discharged his rifle at Ibarra.

An arrest team was formed and approached Ibarra. Ibarra was lying on his back in the driveway. A cell phone lay near Ibarra's body and deputies recovered a revolver from Ibarra's rear pants pocket. A box of ammunition was lying near Ibarra, as were several live rounds of ammunition. Paramedic deputies immediately rendered aid to Ibarra. Their efforts were unsuccessful and Ibarra succumbed to his injuries.

Ponsford was armed with a Colt M4 Carbine rifle. Four expended Speer 11 .223 casings were recovered on or near the ARV. Ponsford fired four rounds at Ibarra.

Ibarra was armed with a Smith and Wesson .357 Magnum revolver. The maximum capacity of this firearm is six live rounds. At the time it was recovered, the revolver contained four live rounds. Two of the chambers were empty. Five live .357 rounds were recovered on the driveway near Ibarra's body and 11 live .357 rounds were removed from Ibarra's right front pants pocket.

Investigators also located two .357 expended shell casings from the sidewalk and gutter area in front of [redacted] North Gage Avenue. This location is where Parga initially spotted Ibarra after the police vehicle was struck by gunfire. Criminalists identified a fresh bullet strike to the front driver's side quarter panel of Parga and Waites' police vehicle.

[redacted] who resides in the front house of [redacted] was interviewed. [redacted] was asleep in her house when she was awakened by her [redacted] told [redacted] that the woman who lived in the rear house was injured. [redacted] got out of bed and saw [redacted] in her home. [redacted] was bleeding from her face and said she did not want [redacted] to call the police. [redacted] scared, called 9-1-1. While on the phone with the 9-1-1 operator, [redacted] heard a gunshot. [redacted] and [redacted] ran out of the home and were met by deputies. [redacted] told investigators that four or five months prior to

[4] It was later determined by investigators that Ibarra was [redacted]

this incident, she overhead Ibarra telling [redacted] "If something was to ever happen, he would either kill himself or go out in a gun battle with the police."

[redacted] was transported to USC Los Angeles Medical Center. She sustained a gunshot wound to her lower cheek and the right side of her neck. [redacted] told investigators that she and her [redacted] got into a verbal argument while walking home from her [redacted] that night. When they arrived home, Ibarra became extremely angry. He grabbed her by the arm, pulled her hair and punched her in the face. Ibarra pushed her to the ground and fired a revolver at her, wounding her in the face.[5] Ibarra dialed 9-1-1 and reported that he had shot his [redacted] They ran to their neighbor's to request assistance. When [redacted] went inside the neighbor's home, Ibarra ran out to the street. [redacted] confirmed that Ibarra previously told her that if she ever called the police to report him, he would not go out without a fight.

On April 30, 2014, Deputy Medical Examiner AbuBakr Marzouk, M.D., performed an autopsy on Ibarra's remains. Ibarra sustained gunshot wounds to the left upper chest, the lower abdomen, the right thigh, and his left buttock. Dr. Marzouk determined the cause of death to be multiple gunshot wounds. A sample of Ibarra's femoral blood was tested. His blood alcohol level was .11%. Ibarra was 26 years old at the time of his death.

CONCLUSION

According to the law in California, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury and (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. CALCRIM No. 505.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight…The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." Graham v. Conner (1989) 490 U.S. 386, 396-397.

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal.App.2d 577.

The evidence examined in this investigation shows that Ibarra shot his [redacted] in the face and immediately called 9-1-1 to report the incident. Ibarra exited his home and walked up and down Gage Avenue. When deputies responded, he fired his weapon at them, hitting Parga and Waites'

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[5] [redacted] initially said that her husband put the gun to her face to scare her and accidently fired the weapon. She later told investigators that he pushed her to the ground and discharged the weapon.

patrol vehicle. Ibarra was ordered multiple times to put down his weapon and surrender to the deputies. At no time did Ibarra comply with these orders.

SEB units, including Deputy James Ponsford, arrived and attempted to contain Ibarra. As SEB units were pulling into position, LASD Air 24 saw Ibarra walk out of their view and return shortly thereafter with ammunition. Air 24 broadcast that Ibarra was reloading his revolver. Ponsford knew that Ibarra shot his wife, fired at deputies, failed to surrender to authorities, and would "shoot it out" with the police rather than surrender. Faced with new information that Ibarra was now reloading his weapon, Ponsford reasonably believed that Ibarra was an imminent threat to deputies and civilians in the area. In fear for his life, the lives of his fellow deputies, and other civilians in the area, Ponsford fired his weapon at Ibarra, killing him.

We conclude that Deputy James Ponsford was placed in reasonable fear of death or great bodily injury by Ibarra's actions and acted lawfully in self-defense and defense of others when he used deadly force. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By Amy Pellman Pentz

AMY PELLMAN PENTZ
Deputy District Attorney
(213) 974-3888

c: Deputy James Ponsford #[redacted]